

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116
RM 8535

DOCKET FILE COPY ORIGINAL

NYNEX COMMENTS

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SUMMARY

NYNEX responds herein to the Commission's Further Notice of Proposed Rulemaking on long-term number (service provider) portability costs and cost recovery. The Commission should provide for fair and reasonable allocation among all telecommunications carriers of the costs of implementing federally-mandated long-term number portability. Equally important, the Commission should assume a lead in ensuring that carriers can actually recover these costs in a competitively neutral, simple manner from end users under a pooling mechanism with an explicit end user surcharge based on total telecommunications retail revenues.

New Section 251(b)(2) of the Communications Act requires local exchange carriers "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." The Commission's First Report and Order in this docket has promulgated rules implementing that Congressional directive. Further, Section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability should be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." NYNEX notes that this requirement is similar to the Universal Service requirement in Section 254(d) that every telecommunications carrier contribute to the preservation and advancement of universal service on an equitable and nondiscriminatory basis. Both requirements seek to ensure that no particular service provider or class of carriers is disadvantaged through its implementation. This parallel is important for the Commission to consider as it develops competitively neutral cost recovery mechanisms for number portability.

At the outset, it should be emphasized that the mandate of establishing long-term number portability is sweeping. All LECs as well as all cellular, broadband PCS and covered SMR providers must provide number portability, and the obligation covers incumbents as well as new entrants. Moreover, the costs of establishing and maintaining number portability will be substantial. NYNEX's preliminary estimate of its cost of establishing long-term number portability is \$400 million in start-up costs.

Accordingly, NYNEX has a vital interest in having a competitively fair and reasonable opportunity to recover those costs. In addressing the various issues in the Notice, NYNEX highlights four points. First, NYNEX highlights the number portability costs that should be deemed eligible for recovery. Second, as per the Act, the cost of number portability should be borne by all telecommunications carriers on a competitively neutral basis; this should ensure that the beneficiaries of number portability equitably bear the costs. Third, the Commission should take a lead to establish competitively fair and reasonable mechanisms for carriers such as NYNEX to recover number portability costs from end users. Fourth and finally, these cost allocation and recovery approaches themselves should not encourage end users to switch service providers.

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NYNEX COMMENTS

I. INTRODUCTION

The NYNEX Telephone Companies¹ ("NYNEX") file these Comments in response to the Commission's Further Notice of Proposed Rulemaking ("Notice") released July 2, 1996, in the above-captioned matter.

Section 251(b)(2) of the Communications Act, as added by the Telecommunications Act of 1996 (the "Act"), requires local exchange carriers "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." The Commission's First Report and Order ("Order") in this docket (which accompanies the Notice) has promulgated rules implementing that Congressional directive. Further, Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability should be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." NYNEX notes that

¹ New England Telephone and Telegraph Company and New York Telephone Company.

this requirement is similar to the Section 254(d) Universal Service requirement that every telecommunications carrier contribute to the preservation and advancement of universal service on an equitable and nondiscriminatory basis. Both requirements seek to ensure that no particular service provider or class of carriers is disadvantaged through its implementation. Thus, this parallel is important for the Commission to consider as it develops competitively neutral cost recovery mechanisms for number portability.

The purpose of the Notice is to explore issues on long-term number (service provider) portability costs and cost recovery. At the outset, it should be emphasized that the mandate of establishing long-term number portability is sweeping. All LECs as well as all cellular, broadband PCS and covered SMR providers must provide number portability, and the obligation covers incumbents as well as new entrants. Moreover, the costs of establishing and maintaining number portability will be substantial. NYNEX's preliminary estimate of its cost of establishing long-term number portability is \$400 million in start-up costs.

Accordingly, NYNEX has a vital interest in having a competitively fair and reasonable opportunity to recover those costs. In addressing the various issues in the Notice, NYNEX highlights four points. First, NYNEX highlights the number portability costs that should be deemed eligible for recovery. Second, as per the Act, the cost of number portability should be borne by all telecommunications carriers on a competitively neutral basis; this should ensure that the beneficiaries of number portability equitably bear the costs. Third, the Commission should take a lead in this proceeding to establish competitively fair and reasonable mechanisms for carriers such as NYNEX to recover number portability costs from end users. Fourth and finally, these cost allocation and recovery approaches themselves should not encourage end users to

switch service providers.

II. THE FCC SHOULD PERMIT RECOVERY OF THE COSTS OF ESTABLISHING NUMBER PORTABILITY AS SPECIFIED BY NYNEX

The Commission tentatively concludes that three types of costs are involved in providing long-term number portability: (1) costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate and maintain the databases needed to provide number portability;² (2) carrier-specific costs directly related to providing number portability (e.g., the costs to purchase the switch software implementing number portability); and (3) carrier-specific costs not directly related to number portability (e.g., the costs of network upgrades necessary to implement a database method). NYNEX concurs with this categorization except that the Commission, in determining what costs are eligible for recovery, should focus on whether costs are caused by number portability rather than whether costs are “directly related” to number portability. This focus would comport with the statutory language in Section 251(e)(2) referring to the cost of “establishing” number portability. Moreover, the cost allocation principles upon which the Commission has historically relied recognize the costs of some network investment are shared among various capabilities and thus should be equitably assigned to each of these functions.³

² In both the Order (¶ 95) and the Notice (¶ 212), the Commission suggests that the architecture the Number Portability Administration Center (NPAC) utilizes could be an SCP pair(s) as well as an SMS. However, none of the States that have moved forward to select a database administrator have used this arrangement nor does NYNEX envision its implementation. NYNEX envisions the NPAC role as that of an impartial record-keeper for which an SMS is aptly suited, while individual service providers will deploy the SCP databases for real time call processing.

³ See Notice ¶ 131; Separation Of Costs, Joint Cost Order, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988), aff'd

The **category 1** costs⁴ eligible for recovery should include:

Start-up

- SMS(s)
- Data fill
- Limited Liability Corporation(s)

Ongoing

- Links and ports
- Uploads and downloads
- User ID's
- Other system operations, administration, maintenance, provisioning and upgrades

The **category 2** costs eligible for recovery should include:

Start-up

- LNP software (e.g., LRN) and any future upgrades specific to service provider number portability capabilities
- LNP Service Logic and associated hardware, e.g., SCPs
- Global Title Translation (GTT) application and associated hardware (e.g., GTT Server) for non-call associated signaling to allow features such as LIDB and CLASS (e.g., Automatic Callback/Recall) to function in a number portability environment
- Local carrier-specific Service Management Systems (LSMS)
- Operator services equipment modifications
- Advancement of hardware/software associated with:
 - switch generic upgrades to obtain LNP
 - AIN if not scheduled in a time frame needed for LNP
 - Advancement of analog switch replacements
 - SS7 capabilities planned for deployment beyond the date LNP would require them (i.e., higher capacity links)
- Upgrades/augmentations/modifications to:
 - SS7 infrastructure
 - OSSs
 - Trunking

Ongoing

- Ongoing system operations, administration, maintenance, provisioning and upgrades

sub nom. Southwestern Bell Tel. Co. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990); Sections 64.901, 32.27 of FCC Rules.

⁴ These are costs the Local Number Portability Administrator (LNPA) will incur and seek reimbursement for, e.g., establishment of the SMS, and/or will charge individual service providers for, e.g., links and ports, uploads and downloads.

- “PIC” change porting from one carrier to another
- Support for carriers unable or unwilling to perform their own queries

Finally, indirect carrier-specific costs to implement number portability (category 3 costs such as network upgrades), to the extent they are not caused by the need to provide number portability, should be borne by each individual carrier.

III. THE COSTS OF ESTABLISHING NUMBER PORTABILITY MUST BE BORNE BY ALL TELECOMMUNICATIONS CARRIERS IN A COMPETITIVELY NEUTRAL MANNER

The Telecommunications Act (Section 251(e)(2)) requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis. Thus, the Commission invites comment on the meaning of the term “all telecommunications carriers” in Section 251(e)(2) and on whether the Commission has authority to exclude certain groups of telecommunications carriers from the cost recovery mechanisms for number portability.⁵ The Order at ¶ 8 sets out the definition of telecommunications carrier which should be employed in this context. That definition essentially includes all providers (except aggregators) of telecommunications (basically, pure transmission services) for a fee directly to the public. That definition would include all LECs (incumbents and new providers), interexchange carriers and CMRS carriers.⁶ NYNEX believes that since the plain language of Section 251(e)(2) refers to “all telecommunications carriers” [emphasis added] bearing number portability costs, the Commission does not have the discretion to exclude any carriers from the cost recovery mechanisms for number portability.⁷ This is a sensible result since:

⁵ See Notice ¶ 209.

⁶ See Order ¶¶ 4, 8.

⁷ In the future, based on an appropriate record, the Commission might be able to forbear from applying particular provisions of Section 251(e)(2). See Section 10 of Communications Act.

As [the Commission] concluded in the [Order], and as Congress has determined in the 1996 Act, number portability will benefit all telecommunications carriers and users of telecommunications services through increased competition.⁸ [Emphasis added.]

Thus, as emphasized by the Commission, the sweeping federal public policy mandate of number portability will have widespread benefits for all telecommunications carriers and their customers. As the Commission has observed in the Order (§ 2):

Number portability is one of the obligations that Congress imposed on all local exchange carriers, both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. In its report, the Senate Committee on Commerce, Science and Transportation concluded that the “minimum requirements [for interconnection set forth in new section 251(b) including number portability,] are necessary for opening the local exchange market to competition.” Likewise, the House of Representatives Committee on Commerce determined that “the ability to change service providers is only meaningful if a customer can retain his or her local telephone number.”⁹

To the same effect, the Commission has declared:

We tentatively conclude that the portability of geographic telephone numbers benefits consumers by providing them greater personal mobility and flexibility in the use of telecommunications services and by contributing to the development of competition among alternative providers of local telephone and other telecommunications services.¹⁰

NYNEX believes that these benefits of implementing long-term number portability will primarily flow to new entrants. Thus, the Commission should make sure that those entities bear

⁸ See Notice ¶ 213.

⁹ Footnotes omitted.

¹⁰ Docket 95-116 NPRM released July 13, 1995, ¶ 19. See also *id.* at ¶¶ 4 (“Number portability appears to offer substantial public interest benefits”), 5, 7.

their fair share of costs reflecting such benefits, and that (as discussed infra) the Commission's policies not encourage end users to change service providers.

With respect to the costs for facilities shared by all carriers for the provision of number portability (category 1 costs such as the costs of building and administering regional databases), the Commission tentatively concludes that the recovery of these costs should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers. Under this approach, charges paid to other carriers, such as access charges, would be subtracted from gross telecommunications revenues when determining the relevant amount of each carrier's telecommunication revenues for purposes of cost allocation.¹¹ NYNEX disagrees with this approach since it would allocate a disproportionate share of costs to incumbent LECs and place them at a competitive disadvantage as IXC's enter the intrastate market including local and intraLATA toll. Additionally, under NYNEX's initial reading of the FCC's Section 251 Order,¹² it would appear that carriers could also subtract out the charges paid under interconnection for exchange access, resale and unbundled elements.

A simple numerical example illustrates how the Commission's proposed approach would place a disproportionate burden on incumbent LECs and not be competitively neutral. Assume that: both an incumbent LEC and an IXC have \$1000 in total telecommunications retail revenues; and the LEC charges \$600 in carrier access charges to the IXC. Thus, the incumbent LEC has gross revenues (net of payments to other carriers) of \$1600 (i.e., \$1000 plus \$600); and the IXC has gross revenues (net of payments to other carriers) of \$400 (i.e., \$1000 minus \$600).

¹¹ See Notice ¶¶ 212-13.

¹² CC Docket No. 96-98, First Report and Order released August 8, 1996.

Under the Commission's proposal, the funding base for number portability costs is \$2000 (i.e., \$1600 plus \$400). Assume number portability costs for the industry of \$200. Therefore, the surcharge would be 10% applied to the \$2000 base to fund the \$200 in costs. Thus, the incumbent LEC would be responsible for \$160 (i.e., 10% times \$1600); and the IXC would be responsible for only \$40 (i.e., 10% times \$400).

Importantly, however, it appears that the incumbent LEC could not apply the surcharge to the \$600 in carrier access charges. This is because the FCC's Section 251 Order appears to preclude any subsidies from being placed on carrier charges.¹³ Therefore, the incumbent LEC would probably have to apply the surcharge to the \$1000 of retail revenues, which would translate into a 16% surcharge in order to generate \$160. However, the IXC would only have to apply a 4% surcharge to its base of \$1000 in retail revenues to generate \$40. Requiring LECs to apply 16% while the IXCs apply only 4% is not competitively neutral. If retail revenues are used, all telecommunications carriers apply 10%.

Clearly, the Commission's proposed approach would impose a disparate burden on the incumbent LEC for number portability cost recovery, which would seriously disable the LEC from being able to effectively compete with the IXC. Plainly, this unbalanced approach must be rejected.

Instead, NYNEX recommends the Commission provide for the use of total telecommunications service retail revenues to allocate category 1 costs. Number portability benefits both the State and federal jurisdictions. Thus, it is appropriate to use total retail

¹³ See Section 251 Order ¶¶ 5, 713, 730. Carrier charges will include carrier access revenues, revenues from unbundled network elements and resale.

revenues, i.e. the sum of intrastate and interstate retail revenues. This approach is competitively neutral, reflects the fact that number portability primarily benefits users of retail services, and satisfies the Commission's desire to avoid a double-count of revenues in the allocator.¹⁴ Indeed, the use of total retail revenues as a competitively neutral allocator received significant support from parties such as AT&T and GTE, as well as NYNEX, in their Comments to the Federal-State Joint Board in the Universal Service proceeding, because of this allocator's fairness, simplicity and efficiency.¹⁵ These benefits are discussed in greater detail in Section IV infra.

With respect to carrier-specific costs to implement number portability (category 2 costs such as the costs of purchasing the switch software necessary to implement a long-term solution), the Commission invites comment relative to two possible ways of allocating these costs: (1) require individual carriers to bear their own costs of deploying number portability in their networks; (2) require all carriers in a given region to pool their number portability costs, which then would be spread across all carriers providing and using number portability based on some allocator, such as gross telecommunications revenues or number of subscriber lines.¹⁶

NYNEX recommends that category 2 costs be primarily recovered from a pool that all telecommunications carriers fund using a similar approach to that discussed for category 1 start-up costs, i.e., allocate based on total telecommunications retail revenues.¹⁷ Those category 2 costs should be submitted by carriers for inclusion in the pool. Then the revenue requirements

¹⁴ See Notice ¶ 213.

¹⁵ See AT&T Comments 8-9 and GTE Comments 16-18, both filed on April 12, 1996 in CC Docket No. 96-45.

¹⁶ See Notice ¶ 221.

¹⁷ Such category 2 costs will be incurred by individual carriers in the first instance, as opposed to category 1 costs incurred by administrators and then apportioned or billed to carriers.

for funding this pool should be apportioned or billed to carriers based on total telecommunications retail revenues. Such pooling could be done on a regional basis to the extent there are significant cost differences.¹⁸

NYNEX, due to the size of its network and its position as an incumbent, will have a much larger initial investment to implement number portability than its competitors.¹⁹ NYNEX understands the need to make this investment. However, without competitively neutral cost recovery in place, requiring incumbents to deploy this capability would run counter to the Act. To require carriers to bear their own category 2 number portability costs would plainly disadvantage incumbent LECs such as NYNEX and be contrary to the Commission's criteria for a "competitively neutral" cost recovery mechanism.²⁰ Were NYNEX forced to absorb such disparately high costs, end users would be encouraged to switch from NYNEX to other competitive LECs with lower costs, leaving higher unit costs for NYNEX to recover from a dwindling customer base that is further encouraged to leave NYNEX. Clearly, the Act does not intend this result.

IV. TO MAINTAIN COMPETITIVE NEUTRALITY, COST ALLOCATION AND RECOVERY ARE INSEPARABLE

Section III above has addressed how the costs of establishing long-term number portability should be allocated among telecommunications carriers in a competitively neutral

¹⁸ As necessary, the Commission could issue evenhanded guidelines on how carriers should identify costs for inclusion in the pool, and could also provide for a cost audit process funded by carriers. The NANC, NANPA or other appropriate party selected by the Commission could oversee this process, with the oversight costs to be recovered in FCC regulatory fees.

¹⁹ Indeed, NYNEX expects that category 2 costs will dwarf category 1 costs.

²⁰ See Order ¶¶ 132, 135.

manner. An equally important question, on which the Commission seeks comment,²¹ is how carriers should be able to actually recover these costs in rates for services or surcharges to end users. NYNEX believes that these two areas -- cost allocation and recovery -- are inseparable. Costs will not be borne on a competitively neutral basis unless fair and reasonable mechanisms are available for actual monetary recovery.

It should again be stressed that long-term number portability is a broad mandate imposed by Congress and the Commission which will entail huge costs and have a profound effect on the telecommunications industry. Long-term number portability is not a discretionary network service deployed selectively by carriers to meet market demand.

The Commission has "exclusive jurisdiction" over U.S. portions of the North American Numbering Plan, including long-term number portability and cost support.²² Having specifically mandated in the Order how long-term number portability is to be implemented by telecommunications carriers throughout the U.S., the FCC should also take a lead to provide for adequate, equitable and nondiscriminatory cost recovery mechanisms. The simplest and fastest way for the Commission to do this would be to, first, find that the category 1 and category 2 costs of long-term number portability benefit both intrastate and interstate service users; and, second, direct that a mandatory end user surcharge on total retail revenues be implemented for explicit cost recovery. That surcharge would be uniform and applied to all end users of telecommunications service, regardless of their service provider, as a fixed percentage applied to their billed amounts. The revenues from the surcharge would then be pooled and shared by

²¹ See Notice ¶¶ 215, 222-23.

²² See Section 251(e). See also Sections 1, 251(b)(2); Notice ¶¶ 10, 74, 77, 81, 236.

telecommunications carriers in proportion to their number portability allocated costs.

Many benefits of a surcharge as described above can be realized.²³ First, such a surcharge offers a straightforward method for carriers to actually recover the costs from end users who will benefit from number portability and its competition-enhancing effects.²⁴ Second, each telecommunications carrier providing service would charge the same surcharge in the same way, thus maintaining competitive neutrality.²⁵ In this way, end users will not be encouraged to switch service providers just because of how number portability costs are recovered; they can switch based upon competitive merits, consistent with the pro-competitive goals of the Telecommunications Act.²⁶ Third, making the surcharge explicit and visible to end users would make clear how federally-mandated number portability is being supported, and improve accountability for the costs. Embedding the costs in carriers' rates would create distortions in the marketplace,²⁷ and remove direct accountability for the costs.

This approach to number portability cost recovery is supported by the treatment of Universal Service under Section 254 of the Act. In each case, substantial costs incurred to serve

²³ Further details of an explicit end user surcharge approach can be worked out by the NANC or NANPA, under the aegis of the FCC, e.g., by the NANC and/or NANPA.

²⁴ See Notice ¶ 213. Under this approach, potential federal-state jurisdictional complexities can be avoided.

²⁵ With a uniform surcharge across all providers and services, costs are recovered from all end users on exactly the same basis -- total retail revenues. Additionally, high volume users bear a proportionate share of the number portability costs. This approach provides the largest possible funding base, the lowest possible surcharge and thus the least distortion in customer behavior.

²⁶ See Order ¶ 2.

²⁷ Furthermore, a number of States have incentive regulation plans in effect freezing certain rates, which would constrain the ability to recover number portability costs in rates.

the public benefit are spread among carriers and recovered from end users on an equitable, explicit basis. Section 254(b)(4) provides that all telecommunications carriers must contribute to the funds that will be used by eligible carriers to provide universal service. Section 254(b)(5) and 254(d) states that mechanisms to support universal service should be “specific, predictable, and sufficient.” Section 254(e) states that any universal service support “should be explicit and sufficient to achieve the purposes of this section,” and that such support is to be used by an eligible carrier “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” These provisions require explicit funding mechanisms for contributors to universal service as defined in the Act. Accordingly, in Docket No. 96-45, NYNEX has advocated that revenues to support the Universal Service Fund should be collected through a single surcharge mechanism applied to customers’ bills and based on (interstate) retail revenues.²⁸

In addition to the cost pooling and recovery proposals discussed above, NYNEX believes that two types of separate charges based on category 2 costs should be applied outside of the pool. First, after an end user has made an initial selection of local exchange carrier, a nominal PIC charge should apply where the user subsequently ports the number, similar to the way changing IXC’s is handled. This will help offset the ongoing cost of number portability and prevent inefficient churn and abuse of the system. The second charge would be a database query charge assessed to carriers that are unwilling (e.g., IXC’s) or unable (e.g., wireless) to perform their own queries.

²⁸ See CC Docket No. 96-45, NYNEX Comments filed April 12, 1996; NYNEX Reply Comments filed May 7, 1996.

NYNEX envisions that, after the initial costs of number portability have been recovered, there will no longer be need for the cost pool. At that point, the category 1 ongoing costs of operating the database could be recovered through recurring and nonrecurring charges. Charges could be applied for User IDs, links and ports into the system, and uploads and downloads based on usage. After an initial account establishment charge (nonrecurring), the rest of these charges could be recurring. Upon termination of the pool, the surcharge would be terminated. Number portability costs would then become a cost of doing business absorbed by each telecommunications carrier and recovered as that carrier sees fit and is able to do so.

In all events, to ensure competitive equity in cost recovery, the Commission should permit incumbent LECs to employ depreciation (or amortization) rates comparable to other telecommunications carriers. This would be appropriate also in view of the fact that the costs are being incurred to comply with a broad regulatory mandate, as opposed to carrying out carrier initiatives, e.g., in response to market factors.

V. CONCLUSION

The Commission should provide for fair and reasonable allocation among all telecommunications carriers of the costs of implementing federally-mandated long-term number portability. Equally important, the Commission should assume a lead in ensuring that carriers can actually recover these costs in a competitively neutral, simple manner from end users under a pooling mechanism with an explicit end user surcharge based on total telecommunications retail revenues.

Respectfully submitted,

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